

DETAILED ACTION

This Office Action is responsive to the Remarks filed on March 1, 2010. The rejection was affirmed by the Board of Appeals, filed 06/18/2008. Thus, this rejection is made final.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 11-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simpkins et al., U.S. Pat. Application Pub. 2003/0235723 A1, in view of Kenchington et al., U.S. Pat. No. 6,626,650 B1.

Rejection of claims 11-31 drawn to a fuel cell assembly.

Simpkins et al., teach a fuel cell assembly comprising a fuel cell stack, a supporting structure, and a gas spring disposed with the assembly (abstract) between the stack and supporting structure (Fig. 3), the spring including a first and second membranes (sect. 0033), means for sealing edges of the membranes to define a closed chamber for capture of gas (sect. 0033). It teaches a solid oxide fuel cell (sect. 0025-0027). Simpkins et al., do not teach a first and second valve means.

Kenchington et al., teach a first (col. 8, lines 1-4) and second valve means (col. 13, lines 6-14) for fluid displacement (col. 3, lines 15-21), which may be used in a fuel

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cell system (col. 6, lines 4-9), and a gas spring disposed with the assembly (col. 3, lines 7-9). Regarding claims 30 and 31: It teaches a first valve positioned in the membrane for admitting gas to the chamber from exterior of gas spring (col. 3, lines 30-31). It teaches a second valve positioned in membrane for exhausting gas from chamber into exterior, the exterior is at a second pressure (col. 5, lines 38-41); the second pressure is ambient air pressure (col. 5, lines 38-41).

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to insert the teachings of Kenchington et al., into the teachings of Simpkins et al., because Kenchington et al., teach that the first and second valve means allow gas to be expelled only when a pressure differential is established, which would prevent a portion of gas from leaking in an opposite direction from the flow of gas.

Response to Arguments

3. Applicant's arguments filed 3/1/10 have been fully considered but they are not persuasive. Applicant's arguments are not persuasive because the rejection of claims 11-29 was affirmed by the Board of Appeals, filed 06/18/2008, prior to the amendment of adding new claims 30 and 31 (filed 8/20/08). Claims 30 and 31 were considered previously and it appears that the previous rejection (Simpkins as a primary reference) could be employed in the rejection of claims 11-31, thus this rejection is made final.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANGELA J. MARTIN whose telephone number is (571)272-1288. The examiner can normally be reached on Monday-Friday from 10:00 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dah-Wei Yuan can be reached on 571-272-1295. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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AJM

Examiner, Art Unit 1795

/Dah-Wei D. Yuan/

Supervisory Patent Examiner, Art Unit 1795